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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4466

13 **EDGAR HERNANDEZ**
2287 Spring Oak Way
14 San Diego, CA 92139

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 45656**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about November 7, 2002, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 45656 to Edgar Hernandez, also known as Edgar Aguirre Hernandez
25 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
26 relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 4301 of the Code states:

4 The board shall take action against any holder of a license who is guilty of
5 unprofessional conduct or whose license has been procured by fraud or
6 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
7 not limited to, any of the following:

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9 (h) The administering to oneself, of any controlled substance, or the use of any
10 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
11 dangerous or injurious to oneself, to a person holding a license under this chapter, or
12 to any other person or to the public, or to the extent that the use impairs the ability of
13 the person to conduct with safety to the public the practice authorized by the license.

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15 (k) The conviction of more than one misdemeanor or any felony involving the
16 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
17 or any combination of those substances.

18 (l) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
21 States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive
23 evidence of unprofessional conduct. In all other cases, the record of conviction shall
24 be conclusive evidence only of the fact that the conviction occurred. The board may
25 inquire into the circumstances surrounding the commission of the crime, in order to
26 fix the degree of discipline or, in the case of a conviction not involving controlled
27 substances or dangerous drugs, to determine if the conviction is of an offense
28 substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

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(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

11. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COSTS

12. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(February 4, 2011 Criminal Conviction for Unlawful Fighting on December 24, 2010)

13. Respondent has subjected his registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about February 4, 2011, in a criminal proceeding entitled *People of the State of California v. Edgar Aguirre Hernandez*, in San Diego County Superior Court, case

1 number M124126, Respondent was convicted on his plea of guilty to violating Penal Code
2 section 415, subdivision (1), unlawfully fighting in a public place, a misdemeanor, a lesser-
3 included offense of the original count of vandalism under \$400 (Pen. Code, § 594(a)(b)(2)(A),
4 which was dismissed by the court.

5 b. As a result of the conviction, on or about February 4, 2011, Respondent was
6 granted three years summary probation, ordered to pay fines, fees, and restitution, and to comply
7 with probation terms.

8 c. The facts that led to the conviction are that on or about the early morning of
9 December 24, 2010, a patrol officer with the San Diego Police Department responded to a report
10 of a disturbance at a gas station. Officers on scene took statements from witnesses and learned
11 that a group of college students had hired a driver to transport them from a downtown San Diego
12 night club to their residences. Respondent, who was a passenger, started spitting in the van and
13 refused to stop. No one knew who Respondent was. The driver stopped and told Respondent to
14 get out and call a cab. Respondent became angry and began hitting and kicking the van. Another
15 passenger attempted to stop Respondent, and was punched in the face by Respondent. Officers
16 described Respondent as extremely intoxicated; he could barely stand or walk on his own.
17 Respondent was arrested for being drunk in public and vandalism.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(July 12, 2012 Criminal Conviction for DUI with Two Prior DUI's on May 27, 2012)**

20 14. Respondent has subjected his registration to discipline under sections 490 and 4301,
21 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
22 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

23 a. On or about July 12, 2012, in a criminal proceeding entitled *People of the State*
24 *of California v. Edgar Aguirre Hernandez*, in San Diego County Superior Court, case number
25 M152436, Respondent was convicted on his plea of guilty to violating Vehicle Code section
26 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,
27 a misdemeanor. The court found true the allegations that Respondent was previously convicted
28 of the same offense on March 25, 2009, and November 13, 2007. The court dismissed an

1 additional count of violating Vehicle Code section 23152, subdivision (a), driving under the
2 influence of alcohol, pursuant to a plea agreement. The court certified Respondent's BAC as .09
3 percent.

4 b. As a result of the conviction, on or about July 12, 2012, Respondent was
5 granted five years summary probation, and ordered to serve 120 days in custody. Respondent
6 was further ordered to complete a Multiple Conviction Program, attend a MADD Victim Impact
7 Panel session, and pay fines, fees, and restitution. Respondent was required to install an ignition
8 interlock device on his vehicle.

9 c. The facts that led to the conviction are that on or about 1:30 in the morning,
10 Respondent was stopped at a DUI checkpoint conducted by the San Diego Police Department.
11 Respondent told the officer he had not consumed any alcohol, however, the officer could smell
12 the odor of an alcoholic beverage coming from Respondent. Respondent submitted to a series of
13 field sobriety tests, none of which he was able to perform as explained and demonstrated by the
14 officer. Respondent provided two breath samples which were analyzed by the preliminary
15 alcohol screening devices with a BAC of .09 percent. Respondent was arrested for driving under
16 the influence.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of Alcohol)**

19 15. Respondent has subjected his registration to disciplinary action under section 4301,
20 subdivision (h) of the Code for unprofessional conduct in that on or about May 27, 2012, he was
21 impaired by alcohol while operating a motor vehicle, as detailed in paragraph 14, above.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Multiple Alcohol-Related Convictions)**

24 16. Respondent has subjected his registration to disciplinary action under section 4301,
25 subdivision (k) of the Code for unprofessional conduct in that he was convicted of three alcohol-
26 related misdemeanors as described in paragraphs 14 and 17.

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1 **DISCIPLINARY CONSIDERATIONS**

2 17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
3 to California Code of Regulations, title 16, section 1769, Complainant alleges:

4 a. On or about November 13, 2007, in a prior criminal proceeding entitled *People*
5 *of the State of California vs. Edgar Aguirre Hernandez*, in San Diego County Superior Court,
6 case number M017808, Respondent was convicted of violating Vehicle Code section 23152,
7 subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more, a
8 misdemeanor.

9 b. On or about March 25, 2009, in a prior criminal proceeding entitled *People of*
10 *the State of California vs. Edgar Aguirre Hernandez*, in San Diego County Superior Court, case
11 number M071812, Respondent was convicted of violating Vehicle Code section 23152,
12 subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more, a
13 misdemeanor.

14 c. On or about July 16, 2010, the Board issued Citation No. CI 2008 39470 to
15 Respondent and imposed an \$800 fine for violating Business and Professions Code section 4301,
16 subdivision (h), use of alcohol in a dangerous manner; and section 4301, subdivision (l),
17 conviction of crimes substantially related to the qualifications, functions, and duties of a licensee.

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1 **PRAYER**

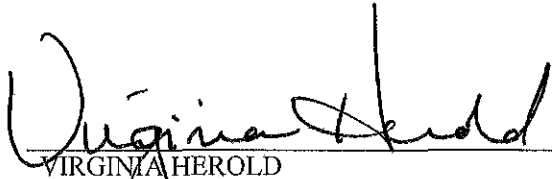
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacy Technician Registration Number TCH 45656,
5 issued to Edgar Hernandez, also known as Edgar Aguirre Hernandez;

6 2. Ordering Edgar Hernandez to pay the Board of Pharmacy the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

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11
12 DATED: 1/18/13


13 VIRGINIA HEROLD
14 Executive Officer
15 Board of Pharmacy
16 Department of Consumer Affairs
17 State of California
18 Complainant

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